

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of	)	
	)	
Gary P. Cook	)	Art Unit: 1615
	)	
Application No. 10/565,401	)	Examiner: Tran, Susan T.
	)	
Filing Date: 1/20/2006	)	Confirmation No. 1909
	)	
For: CONTROLLED RELEASE	)	
COMPOSITIONS	)	

**RESPONSE TO RESTRICTION REQUIREMENT**

Mail Stop Amendment  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

BALLARD SPAHR LLP

Customer Number 23859

Sir:

In response to the Restriction Requirement mailed June 2, 2009, please consider the remarks and elections below. In that Restriction Requirement, the Examiner set a one-month period in which to reply, *i.e.*, by July 2, 2009. Accordingly, enclosed herewith is a Request for a Three-Month Extension of time. Thus, this paper is timely.

The Examiner restricted the application and has required an election of one of following three groups under 35 U.S.C. 121 and 372:

Group I: Claims 1-9 and 19-27, drawn to a composition comprising a bioactive agent and an organic ion being encapsulated by a polymer;

Group II: Claim 10-18, are drawn to a controlled release microparticle composition prepared by a process that comprises at least 5 steps; and

Group III: Claims 28-36, are drawn to a composition comprising bioactive agent and an organic ion being encapsulated by a polymer.

**As required in response to this action, Applicants elect Group II, Claims 10-18, with traverse.**

Applicants respectfully request that the restriction requirement be reconsidered. For a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121); and (2) that the search and

examination of the entire application cannot be made without *serious burden* on the Examiner. See M.P.E.P. § 803. Applicants request that the restriction requirement be reconsidered because the Examiner has not demonstrated that a *serious burden* would be required to examine all the claims. M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Applicants respectfully submit that the Examiner has not shown that the second requirement has been met. Specifically, there has been no showing that it would be a serious burden to search and examine the three groups together.

In conclusion, for the reasons stated above, Applicant respectfully asserts that restriction of the claims as set forth by the Examiner would be contrary to promoting efficiency, economy and expediency in the Patent Office and further point out that restriction by the Examiner is discretionary (M.P.E.P. § 803.01). Examining all of the claims together would eliminate the necessity of prosecuting multiple, separate, yet intimately related applications. Thus, Applicant respectfully requests that all of the claims of this application be examined together. Consequently, reconsideration and modification or withdrawal of the restriction requirement is requested.

Enclosed herewith is payment in the amount of \$1,730.00 for the fee under 37.C.F.R. §1.17(a)(4) for the Four-Month Extension of Time. No additional fees are believed due; however, the Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account No. 14-0629.

Respectfully submitted,  
BALLARD SPAHR LLP

/Christopher L. Curfman/

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Christopher L. Curfman, JD, PhD  
Registration No. 52,787

BALLARD SPAHR LLP  
Customer Number 23859  
(678) 420-9300 Phone  
(678) 420-9301 Fax

**ATTORNEY DOCKET NO. 02181.0086U2**  
**VIA EFS-WEB**

<b>CERTIFICATE OF ELECTRONIC TRANSMISSION UNDER 37 C.F.R. § 1.8</b>			
I hereby certify that this correspondence, including any items indicated as attached or included, is being transmitted via electronic transmission via EFS-Web on the date indicated below.			
Name of Person (Print/Type)	Christopher L. Curfman		
Signature	/Christopher L. Curfman/	Date	October 15, 2009